

**Board for Professional Engineers and Land Surveyors
Board Meeting Minutes
January 20 & 21, 2005**

**Carmel Mission Inn
3665 Rio Road
Carmel, California, 93923
(831) 622-7014**

Thursday, January 20, 2005

Board Members Present: James Foley (President), Gregg Brandow, Arthur Duffy, David Fruchtman, William Roschen, Millicent Safran, William Schock, Michael Welch, Dale Wilson, and Edward Yu.

Board Members Absent: Cindy Tuttle (Vice President), Robert Jones, and Elizabeth Warren

Board Staff Present: Cindi Christenson (Executive Officer), Gary Duke (Legal Counsel), Debbie Thompson (Budget Analyst), Nancy Eissler (Enforcement Program Manager), and Cindy Fernandez (Executive Analyst)

Public Present: See Attached

1. Roll Call to Establish a Quorum

The meeting was called to order by President Foley at 9:05 a.m. Roll call was taken, and a quorum was established.

2. Closed Session – Personnel Matters, Examination Procedures and Results, Administrative Adjudication, and Pending Litigation (As Needed) [Pursuant to Government Code sections 11126(a) and (b), 11126(c)(1), 11126(c)(3), and 11126 (e)(1)]

- a. Michael William Foster v. Board for Professional Engineers and Land Surveyors, El Dorado Superior Court Case No. PC 20030492

6. Open Session to Announce the Results of Closed Session

Ms. Christenson reported that the Board discussed pending litigation as noticed, specifically Michael William Foster v. Board for Professional Engineers and Land Surveyors, El Dorado Superior Court Case No. PC 20030492.

Ms. Christenson reported that the Board adopted the results of the take-home examination for the candidates who had previously passed the 8-hour portion of the indicated examinations.

Ms. Christenson reported that the Board approved the following cut scores for the October 2004 examinations:

• EIT	score of 70 out of 100
• LSIT	score of 70 out of 100
• Agricultural	score of 70 out of 100
• Chemical	score of 70 out of 100
• Control System	score of 70 out of 100
• Electrical	score of 70 out of 100
• Fire Protection	score of 70 out of 100
• Industrial	score of 70 out of 100
• Mechanical	score of 70 out of 100
• Metallurgical	score of 70 out of 100
• Nuclear	score of 70 out of 100
• Petroleum	score of 70 out of 100
• Traffic	score of 69 out of 112
• Civil 8-hour	score of 70 out of 100
• Seismic Principles	score of 154 out of 300
• Engineering Surveying	score of 168 out of 300
• Structural (State Specific)	score of 58 out of 200
• Geotechnical	score of 395 out of 900

Ms. Christenson reported that the Board adopted the Stipulations regarding Harold Dean Hardin, Robert F. Lauder, David Dahmen, Christopher Russell, and Mark Durrell Sandstrom; the Default Decision regarding Edward Gorge; the Proposed Decisions regarding Fred Wilke and Soussan Bathaee.

7. Public Comment

There was no public comment at this time.

8. Approval of Consent Items (Possible Action)

(These items are before the Board for consent and will be approved with a single motion following the completion of Closed Session. Any item that a Board member wishes to discuss will be removed from the consent items and considered separately.)

a. Approval of the Minutes of the November 10, 2004, Board Meeting

MOTION: Mr. Wilson/Mr. Schock moved to approve the minutes of the November 10, 2004, Board meeting.

VOTE: 10-0, motion carried.

b. Approval of Candidates for Certification/Licensure (Based on Examination Results, Including Successful Appeals, Adopted in Closed Session)

MOTION: Mr. Schock/Mr. Duffy moved to approve candidates for licensure and certification based on examination results, including successful appeal results and take home examination results, approved in closed session.

VOTE: 10-0, motion carried.

9. Approval of Delinquent Reinstatements (Possible Action)

MOTION: Mr. Wilson/Mr. Yu moved to approve the Delinquent Reinstatements as follows:

Civil

1. Robert Clark-Riddell

Reinstate applicant's civil license once he/she pays all required delinquent renewal fees.

2. Beng Hwa Low

Reinstate applicant's civil license once he/she pays all required delinquent renewal fees.

3. Pete Edward Tafoya

Reinstate applicant's civil license once he/she takes and passes the seismic principles examination, the engineering surveying examination, the Board's Laws and Regulations Examination and pays all delinquent and renewal fees.

VOTE: 10-0, motion carried.

10. Comity and Temporary Authorization Applications (Possible Action)

MOTION: Ms. Safran/Mr. Schock moved to approve the Amended Handout Comity List.

VOTE: 10-0, motion carried.

MOTION: Mr. Duffy/Mr. Fruchtmann moved to extend the Temporary Authorization for Albert Highberger for a period of 180-days.

VOTE: 10-0, motion carried.

11. Proposed Absorption of Board into the Department of Consumer Affairs (Possible Action)

Ms Christenson reported that Nancy Hall, the DCA Deputy Director for Board Relations had planned to attend the meeting to answer any questions the Board might have regarding this matter; however, Ms. Christenson had received a message that Ms. Hall would not be able to attend after all.

Richard Markuson, representing the Consulting Engineers and Land Surveyors (CELSOC), advised the Board that several professional associations would be meeting that afternoon to coordinate their response to this proposal. Mr. Duffy stated that he was aware that a number of the associations are opposed to the proposal to eliminate the Board and absorb its functions into the Department.

The Board decided to defer discussion of this item to Friday, January 21, 2005.

12. Special Civil Engineering Examinations Test Plan and Review of Test Specifications (Possible Action)

MOTION: Mr. Duffy/Mr. Wilson moved to adopt the new Test Plan for the Seismic Principles and Engineering Surveying examinations.

VOTE: 10-0, motion carried.

13. Administrative

a. Fund Condition (Possible Action)

Ms. Thompson reported on the Board's fund condition dated December 30, 2004. Renewal revenue projections for FY 2004-05 decreased from \$3,753,000 to \$3,517,520 and application revenue increased from \$3,297,000 to \$3,446,100. Revenue overall is up this year by approximately \$188,000 as compared to last year at this time. The Board still faces a projected deficit in FY 2007/08.

b. FY 2004/05 Budgets (Possible Action)

Ms. Thompson reported that the expenditure projection as of December 31, 2004 for FY 2004-05 is \$7,241,155 with a budget balance of \$113,845 projected for year end.

c. Publication Review (Possible Action)

With regard to the Enforcement Bulletin redesign, only one interested response was received from the three requests for bids sent out on January 13, 2005. The Board expects to make a selection by February 2005 and finalize the bulletin by May/June of 2005. Requests for articles have been sent out and Board staff is now updating enforcement actions to be included in the Bulletin.

The City and County Building Officials Guide is still in the process of being updated.

d. Pass Through of Exam Application Fees (Possible Action)

Ms. Thompson reported that the proposed fee structure will need more work to ensure the fees are more closely related to the specific costs and so that the structure is equitable for both applicants and licensees.

3. Hearing on the Petition for Reinstatement of Revoked License of Fredric V. Allen [OAH No. 2004120180]

The hearing on the Petition for Reinstatement of Revoked License of Fredric V. Allen was held.

4. Hearing on the Petition for Reduction of Penalty of Michael Laroue [OAH No. 2004120181]

The hearing on the Petition for Reduction of Penalty of Michael Laroue was held.

5. Closed Session – Administrative Adjudication [Pursuant to Government Code section 11126(c)(3)] – This Closed Session will be held immediately following the hearings on the Petitions.

In Closed Session, the Board directed the Administrative Law Judge to prepare the written decisions on the Matters of the Petition for Reinstatement of Revoked License of Fredric V. Allen and the Petition for Reduction of Penalty of Michael Laroue.

14. Enforcement

a. Adoption of Amendments to Board Rule 418 (Criteria for Rehabilitation) (Possible Action)

Ms. Eissler advised the Board that no comments had been received regarding the proposed amendments to Board Rule 418, the Criteria for Rehabilitation.

MOTION: Mr. Duffy/Mr. Schock moved to adopt the amendments to Board Rule 418 (Criteria for Rehabilitation) and to direct staff

to prepare the final rulemaking file for submittal to the Department of Consumer Affairs and the Office of Administrative Law for review and approval.

VOTE: 10-0, motion carried.

b. Approval of Modifications to Proposed Amendments to Board Rules 404.1 and 404.2 (Responsible Charge) (Possible Action)

Ms. Eissler reviewed the information contained in the agenda packet regarding the comments received and the suggested modifications to the language based on those comments.

MOTION: Mr. Duffy/Mr. Schock moved to approve the modifications to the amendments to Board Rules 404.1 and 404.2, regarding responsible charge, and to direct staff to notice the modifications for a 15-day public comment period.

Dr. Brandow expressed concern with the recommendation to change back to the word “work” from the word “services.” He stated that “services” more accurately describes what professional engineers do. Mr. Duke advised that he could review the statutes to determine if there were other provisions that use the word “services” as an alternative to the word “work,” which could then be cited as a reference authority so that the word “services” could be used in the regulations. He recommended that the Board table discussion of and action on this item until Friday so that he could review the statutes.

MOTION: Ms. Safran/Mr. Schock moved to table discussion of and action on this item until Friday, January 21, 2005.

VOTE: 10-0, motion carried.

Mr. Fruchtmann stated that he was concerned with the outsourcing of engineering work to overseas companies. Ms. Eissler advised that, under current statutes and regulations, a California licensed engineer must be in responsible charge of the work for California projects, unless otherwise exempt, no matter where the work is performed or where the California licensed engineer is located. She advised that the amendments to Board Rules 404.1 and 404.2 would not change that requirement and are intended to make that requirement even clearer than it currently is. Mr. Fruchtmann agreed that the laws do require a California licensee to be in responsible charge; he would like the Board to discuss the general issue of outsourcing, as a completely separate issue from the responsible charge regulations, at a future meeting.

No vote was taken on the first motion because a motion to table the item supersedes a previous motion.

c. Disclosure of Disciplinary Actions on the Board's Website and Possible Modifications to the Board's Disclosure Policy (Possible Action)

Ms. Eissler reviewed the information in the agenda packet regarding the recommended time periods that summaries of disciplinary actions, citations, and criminal actions would remain on the Board's website. Ms. Eissler stressed that all citations and disciplinary decisions of the Board are matters of public record that must be disclosed by the Board upon request, even if the summary is no longer on the Board's website.

The Board questioned whether the reference to the disciplinary action or citation would be removed from the License Lookup database when the summary was removed from the Board's website. Ms. Eissler advised that the link to the summary that is currently provided in License Lookup would definitely have to be removed, since the summary would no longer be available on the internet; however, the Board could choose to leave the statement regarding the previous action on License Lookup with a notation that further information could be obtained by contacting the Board's Enforcement Unit. Ms. Eissler explained that there is already a notation that people should contact the Board to check on any complaint or disciplinary information that is not available on the website and stated that she gets several calls a week because of that notation.

Richard Markuson, representing the Consulting Engineers and Land Surveyors of California (CELSOC), stated that his organization had discussed this issue and agreed that the summaries should be removed as described in the staff report. He advised that the issue of removing the reference from License Lookup was also discussed and the general consensus was that it would not necessarily be in the best interest of the consumers for the reference to be removed from License Lookup; however, CELSOC decided not to take a position on that issue.

Tom Stout questioned whether the Board should give the respondent the opportunity to review the summary before it was published, as had been suggested by the attorney at the September 2004 Board meeting. Ms. Eissler explained that the information and language in the summaries are taken directly from the decisions and accusations or the citations and are then reviewed by Mr. Duke to ensure that the summaries do not misstate what is in the underlying legal document or go beyond what is in those documents. Ms. Eissler stated that allowing either party – the respondent or the Board – to add information to the summary that is not contained in the underlying legal documents, as the attorney wanted to do, would be highly inappropriate.

President Foley stated that he does not like having summaries on the website; he believes the actual decision and accusation or citation should be available.

Mr. Roschen stated that he believes having the summaries available on the website is a compelling tool for consumer protection.

MOTION: Mr. Duffy/Mr. Schock moved to adopt the policy of continuing to post summaries of disciplinary actions, citations, and criminal actions on its website, for the time periods described in the agenda packet and to remove the notation in License Lookup when the summary is removed from the website.

VOTE: 7-2-1, motion carried. Mr. Yu, Ms. Safran voted nay; President Foley abstained from the vote.

Friday, January 21, 2005

Board Members Present: James Foley (President), Gregg Brandow, Arthur Duffy, David Fruchtmann, William Roschen, Millicent Safran, William Schock, Elizabeth Warren, Michael Welch, and Dale Wilson and Edward Yu.

Board Members Absent: Cindy Tuttle (Vice President) and Robert Jones

Board Staff Present: Cindi Christenson (Executive Officer), Gary Duke (Legal Counsel), Nancy Eissler (Attorney General Liaison Analyst), and Cindy Fernandez (Executive Analyst)

Public Present: See Attached

1. Roll Call to Establish a Quorum

The meeting was called to order by President Foley at 9:00 a.m. Roll call was taken, and a quorum was established.

14. Enforcement

b. Approval of Modifications to Proposed Amendments to Board Rules 404.1 and 404.2 (Responsible Charge) (Possible Action)

Mr. Duke advised the Board that he had reviewed the statutes and believes that the Board can use the word “services” in place of the word “work” in the regulations by including statutes in the reference authority annotation and by including the phrase “services or creative work” in subdivision (a) since that terminology is used in statute. He stated that he would work with staff to insert the word “services” in the appropriate places in the language, because there are some places where the word “work” or “projects” should be used.

Dr. Brandow stated that he believes that the reference to the preparation of engineering or surveying documents in subdivision (a)(2) should not be removed. He suggested that it be rephrased to say “Decisions related to the preparation...” so that it would flow with the rest of the list.

MOTION: Mr. Schock/Mr. Duffy moved to approve the modifications to Board Rules 404.1 and 404.2, as shown in the agenda packet and further modified during the discussion, and to direct staff to notice the modifications for a 15-day public comment period.

VOTE: 11-0, motion carried

Ms. Eissler requested that the Board delegate to the Executive Officer the authority to adopt the modified language as the final language on the condition that no adverse comments, or comments requiring a response, are received during the 15-day comment period.

MOTION: Mr. Duffy/Mr. Schock moved to delegate to the Executive Officer the authority to adopt the modified language as the final language on the condition that no adverse comments, or comments requiring a response, are received during the 15-day comment period.

VOTE: 11-0, motion carried

15. Examinations/Qualifications

a. Special Civil Occupational Analysis Study Update (Possible Action)

Ms. Christenson advised that this item was discussed on Thursday under Item #12, Special Civil Engineering Examinations Test Plan and Review of Test Specifications.

b. Adoption of Amendments to Board Rules 404 and 424(b) and Repeal Board Rule 460 [Definitions, Experience Requirements & Curricula Approved By the Board] (Possible Action)

Ms. Christenson reported the proposed amendments to Board Rules 404, 424, and 460, Approved Curriculum for Professional Engineers and Experience Credit for Education, were noticed for public comment on December 3, 2004. The 45-day period for the submittal of written comments ended on January 17, 2005. No public hearing was scheduled, and no request for a hearing was received. No comments about the proposed amendments were received.

MOTION: Ms. Safran/Mr. Schock moved to adopt the amendments to Board Rules 404, 424, and 460, as shown, regarding the approved curriculum for professional engineers and experience credit for education and to direct staff to prepare the final rulemaking file for submittal to the Department of Consumer Affairs (DCA) and the Office of Administrative Law (OAL) for review and approval.

VOTE: 11-0, motion carried

c. Adoption of Amendments to Board Rule 443 (Inspection of Examination) (Possible Action)

Ms. Christenson reported that the proposed amendments to Board Rule 443, Inspection of Examination, were noticed for public comment on December 3, 2004. The 45-day period for the submittal of written

comments ended on January 17, 2005. No public hearing was scheduled, and no request for a hearing was received. No comments about the proposed amendments were received.

MOTION: Mr. Welch/Mr. Schock moved to adopt the amendments to Board Rule 443, as shown, regarding the inspection of examination and to direct staff to prepare the final rulemaking file for submittal to the Department of Consumer Affairs (DCA) and the Office of Administrative Law (OAL) for review and approval.

VOTE: 11-0, motion carried.

16. Legislative

a. Discussion of Legislation for 2005 (Possible Action)

Ms. Christenson reported that there has been no legislation introduced that affects the Board at this time.

b. Regulation Status Report

No additional report was given.

17. Technical Advisory Committee Reports

(No Committee Meetings were held.)

a. Board Assignments to TACs (Possible Action)

No Board assignments.

b. Appointment of TAC Members (Possible Action)

MOTION: Dr. Brandow/Mr. Yu moved to appoint Mario Dragicevic and John Lohman as members of the GE-TAC, term to expire June 30, 2006.

VOTE: 11-0, motion carried.

18. Liaison Reports (Possible Action)

a. ABET

No report given.

b. NCEES

No report given.

c. Technical and Professional Societies

No report given.

19. President's Report

President Foley reported that he attended the Joint Legislative Sunset Review Committee hearing and testified regarding the Title Act Study and that everything went well.

20. Executive Officer's Report

1. Administration Report

a. Executive summary report

No additional report given.

b. State budget

No additional report given.

2. Personnel

a. New Hires

Ms. Christenson reported that, since the retirement of Patricia Canterbury as the Assistant Executive Officer, the Board has been able to promote six people within the office and to hire two new evaluators.

b. Vacancies

Ms. Christenson advised that the Board no longer has any vacant positions.

3. Enforcement/Examination/Licensing

a. College Outreach

No report given.

b. Report on Enforcement Activities

No report given.

c. Report on Examination Activities

No report given.

4. Publications/Website

a. Website Activity Statistics

No additional report was given.

5. Other

a. DCA update

No report given.

11. Proposed Absorption of Board into the Department of Consumer Affairs (Possible Action)

Ms. Christenson reviewed the information contained in the agenda regarding the Governor's Reorganization Plan that would eliminate the Board and absorb its functions into the Department of Consumer Affairs.

Ms. Christenson explained that the Governor has submitted his proposal to the Little Hoover Commission, which has thirty days to review the proposal and then another thirty days to provide a written report to the Governor; the Commission provides comments and recommendations to the Governor, but it does not have any authority to stop the proposal from moving forward. She explained that the Governor can submit his proposal to the Legislature thirty days after he has submitted it to Commission; the Legislature then has sixty days to act on it, but if either house rejects it by a simple majority vote, then the proposal is dead.

Ms. Christenson advised that the Little Hoover Commission would be holding public hearings the following week and recommended that the Board send a letter to the Commission expressing its position on this proposal.

MOTION: Mr. Duffy/Ms. Safran moved to oppose the elimination of the Board and to send a letter to the Little Hoover Commission with factual statements of the ramifications of such elimination, covering the following issues:

- Loss of membership in NCEES and national mobility
- No savings to the General Fund
- Lack of legal guarantees to public participation

VOTE: 10-1, motion carried. President Foley voted nay.

President Foley stated that he did not want to oppose the Governor. He stated that he believes the Board should present factual statements addressing its concerns with the proposed elimination of the Board. He stated that he does not believe it is the Board's job to oppose the proposal; the Board's job is to inform the Commission and the Governor about the ramifications of the proposal.

Ms. Warren stated that the opposition should be subliminal, rather than overtly stated. Mr. Roschen agreed that the Board might not want to be oppositional, but that the letter should clearly and specifically address the Board's concerns with and the ramifications of this proposal.

MOTION: Ms. Safran/Mr. Wilson moved to reconsider the previous motion.

VOTE: 7-4, motion carried. Mr. Duffy, Mr. Fruchtman, Mr. Roschen, and Mr. Schock voted nay.

Robert DeWitt, representing the Consulting Engineers and Land Surveyors (CELSOC), stated that CELSOC had taken a position to support the continuation of the Board as a Board and to oppose this proposal. He stated that the Board

should oppose this proposal, which would allow the professional associations to support the Board in its opposition.

MOTION: Ms. Safran/Mr. Wilson moved to send a letter to the Little Hoover Commission supporting the continuation of the Board as a Board, with factual statements of the ramifications of the elimination, covering the following issues:

- Loss of membership in NCEES and national influence, which would affect the ability of out-of-state engineers and surveyors to do work in California
- No cost savings to the General Fund
- Lack of legal guarantees to public participation since the Bagley-Keene Open Meeting Act does not apply to advisory committees of the Department
- Loss of continuity and institutional memory without Board members with staggered terms

VOTE: 11-0, motion carried.

MOTION: Ms. Safran/Mr. Wilson moved to direct the President to appoint two Board members to approve the letter as drafted by staff.

VOTE: 11-0, motion carried.

President Foley appointed Ms. Safran and Mr. Wilson to review and approve the letter drafted by staff.

21. Approval of Board Travel (Possible Action)

No Board Travel

22. Other Items Not Requiring Board Action

a. Date of Next Board meeting: March 17 & 18, 2005, San Diego, California

Ms. Eissler advised that there would not be any petition hearings or regulatory hearings at the March meeting. President Foley suggested that the March meeting be a one-day meeting; Ms. Christenson advised that she would review the items for the next agenda and let the Board members know if the meeting could be shortened to only one day.

23. Adjourn

The Board adjourned at 10:50 a.m.

PUBLIC PRESENT

Robert DeWitt, CELSOC
Richard Markuson, CELSOC
Tom Stout, CSPE/CLCPE